



PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q64239

Terrence Martin HINDS, et al.

Appln. No.: 09/782,036

Group Art Unit: 1733

Confirmation No.: 8219

Examiner: Steven D. Maki

Filed: February 14, 2001

For: A METHOD FOR MANUFACTURING A FLOOR COVERING

SUBMISSION OF APPELLANTS' BRIEF ON APPEAL

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an original and two copies of Appellants' Brief on Appeal. A check for the statutory fee of \$330.00 is attached. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of this paper is attached.

Respectfully submitted,

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WASHINGTON OFFICE

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APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 1.192, Appellants submit the following:

I. REAL PARTY IN INTEREST

The real party in interest is the Assignee, TARKETT (IRELAND) LIMITED, by virtue of an assignment recorded on September 22, 1998 at reel 9485 and frame 0405.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, the Appellants' legal representative, or Assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-5, 8, 10-23, and 25-32, are pending, are rejected, and are the subject of this appeal.

Claims 6, 7, 9, and 24, have been canceled, and are not the subject of this appeal.

IV. STATUS OF AMENDMENTS

On March 19, 2004, in response to the Final Office Action as mailed on November 4, 2004, Appellants filed an Amendment in which claims 1, 10, 15-20, 22, and 26, were amended to overcome the Examiner's rejection under §112, 2nd paragraph. The Advisory Action mailed on April 21, 2004 indicated that the March 19 amendment would be entered upon filing an appeal, and that the amendment overcomes the rejection under §112, 2nd paragraph. Accordingly, the claims stand as presented in the March 19 Amendment.

V. SUMMARY OF THE INVENTION

The present invention relates to a method for manufacturing a floor covering and, in particular, to a method for manufacturing a polymeric, for example a vinyl, floor covering.¹ In a conventional manufacturing process for making vinyl floor covering, to a base carrier material there is applied various layers of plastisol.² However, there are a number of problems with such manufacturing techniques. In particular, there is an ever increasing need to minimize production and raw material costs, as well as to optimize product quality. There is therefore a need for an improved cost-effective method for producing floor covering.³ It is out of this need that the present invention has been formulated.

The present invention is directed to a method for manufacturing a floor covering comprising the steps of: scattering powder, granules or pellets of thermoplastic material onto a first substrate to form a first coating; applying a second substrate over the first coating; and scattering powder, granules or pellets of a thermoplastic material onto the second substrate, after the second substrate has been applied over the first coating, to form a second coating. Thus, the method includes a step of scattering powder, granules or pellets onto the second substrate after

¹ Specification at page 1, 1st paragraph.

² Specification at page 1, line 9 - page 2, line 2.

³ Specification at page 2, lines 4-10.

the second substrate has been applied over the first coating. See, for example, the specification at page 3, line 11 - page 4, line 11.

For example, as shown in Fig. 6, one embodiment of the present invention is a method for manufacturing a floor covering comprising: scattering powder, granules or pellets of a thermoplastic material, as at 4, onto a first substrate 3 to form a first coating; applying a second substrate 26 over the first coating; scattering powder, granules or pellets of a thermoplastic material, as at 28, onto the second substrate 26, after said second substrate has been applied over the first coating, to form a second coating; leading the thus coated substrates 3, 26 between a pair of belts 10, 11 of a low pressure double belt press 17; applying heat to fuse the coatings between the belts; smoothing the fused coatings between a pair of nipping rollers 15, 16; and cooling the layered product. Thus, because the second substrate is applied onto the first coating before the powder, granules, or pellets of thermoplastic are scattered thereon, two layers easily and accurately may be formed in one pass through the heating section.⁴ See, also, the specification at page 8, line 28 - page 10, line 7.

VI. ISSUES

Issue 1

Whether claims 1-5, 10-23, and 25-32, properly are rejected under §103(a) as being unpatentable over US Patent 4,396,566 to Brinkmann et al. (hereinafter Brinkmann) in view of US Patent 4,510,201 to Takeuchi et al. (hereinafter Takeuchi) and US Patent 4,743,187 to Schermutzki (hereinafter Schermutzki) and in view of US Patent 3,385,722 to Weaver et al. (hereinafter Weaver) and / or US Patent 2,960,727 to Bradshaw et al. (hereinafter Bradshaw).

⁴ Specification at page 4, lines 1-11.

Issue 2

Whether claim 8 properly is rejected under §103(a) as being unpatentable over Brinkmann in view of Takeuchi and Schermutzki and in view of Weaver and/or Bradshaw, and further in view of US Patent 4,997,507 to Meyer (hereinafter Meyer) and US Patent 3,883,386 to Garbini et al. (hereinafter Garbini).

Issue 3

Whether claims 13-17, 19, and 20, properly are rejected under §103(a) as being unpatentable over Brinkmann in view of Takeuchi and Schermutzki and in view of Weaver and/or Bradshaw, and further in view of the admitted prior art as set forth in the specification at page 1, line 9 to page 2, line 2 (hereinafter the APA).

VII. GROUPING OF CLAIMS

With respect to **Issue 1**, claims 1-5, 10-23, and 25-31, stand or fall together, and claim 32 does not stand or fall together with the remaining claims for at least the reasons set forth in section VIII of this Appeal Brief.

With respect to **Issue 2**, claim 8 stands or falls alone.

With respect to **Issue 3**, claims 13-17, 19, and 20, stand or fall together.

VIII. ARGUMENTS

Issue 1

The Examiner rejected claims 1-5, 10-23, and 25-32, under §103(a) as being unpatentable over US Patent 4,396,566 to Brinkmann et al. (hereinafter Brinkmann) in view of US Patent 4,510,201 to Takeuchi et al. (hereinafter Takeuchi) and US Patent 4,743,187 to Schermutzki (hereinafter Schermutzki) and in view of US Patent 3,385,722 to Weaver et al. (hereinafter Weaver) and / or US Patent 2,960,727 to Bradshaw et al. (hereinafter Bradshaw). Appellants respectfully traverse this rejection for at least the following two reasons.

First, the references fail to teach or suggest all the elements as set forth in Appellants' claims.

Claim 1 sets forth a method for manufacturing a floor covering comprising the steps of: scattering powder, granules or pellets of thermoplastic material onto a first substrate to form a first coating; applying a second substrate over the first coating; and scattering powder, granules or pellets of a thermoplastic material onto the second substrate, after the second substrate has been applied over the first coating, to form a second coating. Thus, the method includes a step of scattering powder, granules or pellets onto the second substrate after the second substrate has been applied over the first coating.

For example, as shown in Fig. 6, one embodiment of the present invention is a method for manufacturing a floor covering comprising: scattering powder, granules or pellets of a thermoplastic material, as at 4, onto a first substrate 3 to form a first coating; applying a second substrate 26 over the first coating; scattering powder, granules or pellets of a thermoplastic material, as at 28, onto the second substrate 26, after said second substrate has been applied over the first coating, to form a second coating; leading the thus coated substrates 3, 26 between a pair of belts 10, 11 of a low pressure double belt press 17; applying heat to fuse the coatings between the belts; smoothing the fused coatings between a pair of nipping rollers 15, 16; and cooling the layered product. Thus, because the second substrate is applied onto the first coating before the powder, granules, or pellets of thermoplastic are scattered thereon, two layers easily and accurately may be formed in one pass through the heating section.⁵

The Examiner relies on Schermutzki to teach a step of applying powder, granules or pellets onto a second substrate.⁶ But the Examiner's reliance on Schermutzki is misplaced. In contrast to that in claim 1, Schermutzki teaches either: simultaneously applying thermoplastic onto a second substrate and applying the second substrate onto a first coating; or applying

⁵ Specification at page 4, lines 1-11.

⁶ Office Action as mailed May 20, 2003, at page 7, 2nd full paragraph.

thermoplastic onto a second substrate, and then applying the second substrate to the first coating to build up a layered product.

During a personal interview conducted on March 2, 2004, the Examiner explained that he considers Brinkman to specifically disclose the application of thermoplastic material onto a supporting textile, and then leading such through a press. See Brinkmann at col. 3, lines 60-68. A resulting structure would resemble Fig. 2 in Takeuchi. The Examiner then explained that Takeuchi teaches a structure wherein a textile 1 is located between two layers of thermoplastic 2, as shown in Fig. 1. Accordingly, starting from Brinkman's disclosure, the Examiner asserted that to get to Takeuchi's Fig. 2 arrangement, one of ordinary skill in the art would look to Schermutzki. The Examiner further asserted that Schermutzki broadly teaches sequential application of thermoplastic material, textile and thermoplastic material.

Appellants respectfully disagree with the Examiner's broad interpretation of Schermutzki because Schermutzki fails to teach the sequential application of thermoplastic, textile onto the thermoplastic, and then application of a second thermoplastic onto the textile. Instead, Schermutzki teaches either: simultaneously applying thermoplastic onto a second substrate and applying the second substrate onto a first thermoplastic coating; or applying thermoplastic onto a second substrate, and then applying the second substrate to the first coating to build up a layered product.

In Figs. 1 and 2, Schermutzki discloses a feeder device 6 that applies powder to an upper belt 1, another feeder device 8 that applies resin to the lower belt 2, and that the softened resin layers on belts 1 and 2 arrive in the pressing zone 3 wherein they are contacted with the glass fiber mat 4.² In such a situation, powder, granules or pellets of a thermoplastic material are not applied onto the second substrate 4. That is, although powder is fed from feeder device 6, it is heated and melted so as to form a soft resin layer by the time it contacts with fiber mat 4. Further, the melted resin on belt 1 is not applied to the fiber mat 4 after the fiber mat 4 has been

² Schermutzki at col. 3, line 57 - col. 4, line 25.

applied over, or contacted with, the first coating; the coatings on belts 1 and 2 contact the fiber mat 4 at the same time, i.e., when they enter the compressing zone 3.

In Figs. 3-5, each of the substrates 4, 4a, 4b, 4', and 4a', has material (either powder or melted powder) applied thereto before it comes in contact with the layer below. Accordingly, none of substrates 4, 4a, 4b, 4', and 4a', are a second substrate onto which powder, granules or pellets are scattered after that substrate has been applied over a first coating, as set forth in claim 1.

In fact, it is the embodiments of Schermutzki's Figs. 3 and 4 that would most closely represent the combination of Brinkman, Takeuchi and Schermutzki. That is, Brinkman discloses applying the particles of raw material onto a textile sheet⁸, which process most closely resembles that applied to Schermutzki's substrates 4 and 4a, wherein particles of raw material are scattered thereon. In Schermutzki's Fig. 3, particles are scattered from resin feeders 11 and 11a respectively onto mats 4 and 4a. Similarly, in Schermutzki's Fig. 4, particles are scattered from resin feeder 11 onto mat 4. However, at the time that resin is applied from feeders 11, 11a, the mats 4 and 4a are not first applied on top of first particles of raw material.

In this regard, the Examiner asserts that Schermutzki teaches a step of scattering thermoplastic powder from device 11d, after the second substrate (fiber mat 4) has been applied over the first coating ... on ... lower belt 2 ...".² Although thermoplastic powder is scattered from device 11d after belt 4 is over belt 2, that thermoplastic powder is not scattered "onto the second substrate", as set forth in claim 1. Instead, the thermoplastic from device 11d is scattered onto a resin and glass fiber layer formed by thermoplastic from feeders 11, 11b, and 11c, as well as glass fibers 55 from device 21. For example, with reference to Schermutzki's Fig. 4, the mat 4 is preheated by heater 13, whereby the powder from device 11 is melted upon contact to form a

⁸ Brinkman at col. 3, lines 60-68.

² Office Action as mailed on November 4, 2003, at page 4, lines 3-7 (emphasis in original).

resin layer.¹⁰ Further, the mat 4 is not in contact with the resin layer 40 before the resin from device 11d is applied.

With respect to claim 32, the Examiner asserts that “ ‘contacting’ the second substrate with the first coating would have been obvious in view of (a) Takeuchi et al’s teaching to contact both sides of a textile sheet with thermoplastic material”¹¹ The Examiner’s reliance on Takeuchi is misplaced. That is, although Takeuchi teaches a textile sheet having both sides thereof coated with thermoplastic, it does not provide any teaching or suggestion as to the order in which that sheet is made. On the other hand, as set forth in claim 32, the second sheet is applied over a first substrate (having thereon a coating of thermoplastic granules or pellets) before that second sheet is scattered with powder, granules or pellets of a thermoplastic material. That is, although the end product of claim 32 may appear similar to that in Takeuchi, claim 32 sets forth a particular order in which the sheet is assembled. And that order is not taught or suggested by Takeuchi.

Further, the Examiner relies on “(b) Schermutzki’s teaching that the thermoplastic powder applying devices may be arranged such that thermoplastic material is scattered on a textile sheet using a device 11d after the textile sheet contacts a layer of thermoplastic on lower belt 2.”¹² Again, the Examiner’s reliance on Schermutzki is misplaced. As shown in Fig. 4, mat 4 does not contact the resin 40 on belt 2 until the mat 4 and belt 3 enter the compression zone 3, i.e., after mat 4 has been scattered with resin from device 11d. Further, note: col. 3, lines 27-32, wherein Schermutzki discloses that it is in compression zone 3 “wherein the horizontal upper flight of the lower belt and the horizontal lower flight of the upper belt 1 are pressed toward each other by means of pressure bodies 30 and roller conveyors 31”; col. 3, lines 48-51, wherein Schermutzki describes that the mat 4 “is guided over a feeder table 37, until it reaches the compression [zone 3] and is seized by the opposing flights and is drawn through the press.”; col.

¹⁰ Schermutzki at col. 2, lines 24-27, 32-33, 58-61, and col. 4, lines 40-55.

¹¹ November 4 Office Action at page 5, 1st full paragraph, lines 1-3.

¹² November 4 Office Action at page 5, 1st full paragraph, lines 3-6 (emphasis in original).

4, lines 32-36, wherein Schermutzki states that the “mats 4 and 4a ... are guided in an approximately horizontal manner by means of feeder belts 42, 43, and enter the compression zone without appreciable deflection.”; and col. 4, lines 59-64, wherein Schermutzki sets forth that “[i]n the compression zone 3 the two glass mats, processed in the manner described above, come together on the upper belt 1 and the lower belt 2 respectively.” Therefore, although device 11d scatters thermoplastic on mat 4, at that point the mat 4 is not in contact with the belt 2; it is only “[i]n the compression zone 3 [that] that two glass mats [4, 4a or 4b] come together on the upper belt 1 and the lower belt 2 respectively.”¹³ Also note col. 5, lines 21-22, wherein Schermutzki sets forth that the mat 4 in the Fig. 4 embodiment “is processed in a manner similar to that described relative to Fig. 3.” Therefore, Schermutzki fails to teach or suggest the claim 32 step of “scattering powder, granules or pellets of a thermoplastic material onto the second substrate, after said second substrate has been contacted with the first coating.”

The Examiner cites Takeuchi as teaching a floor covering using thermoplastic particles on both sides as an alternative to having thermoplastic on only one side. But Takeuchi does not teach or suggest a step of scattering powder, granules or pellets of a thermoplastic material onto the second substrate, after the second substrate has been applied over the first coating.

The Examiner cites Bradshaw and Weaver as teaching smoothing using a pair of rollers and cooling a layer. But neither Bradshaw nor Weaver teaches or suggests a step of scattering powder, granules or pellets of a thermoplastic material onto the second substrate, after the second substrate has been applied over the first coating.

In light of the above, even assuming that one of ordinary skill in the art were motivated to combine the references as suggested by the Examiner, any such combination would still not teach or suggest a step of scattering powder, granules or pellets of a thermoplastic material onto the second substrate, after the second substrate has been applied over (or contacted with) the first coating, as set forth in claims 1 and 32.

¹³ Schermutzki at col. 4, lines 59-64.

Second, the Examiner has failed to establish *prima facie* obviousness by a preponderance of the evidence. To establish *prima facie* obviousness, the ultimate determination must be based on the entire record, by a preponderance of evidence.¹⁴ The legal standard of “a preponderance of evidence” requires the evidence to be more convincing than the evidence which is offered in opposition to it. Under 35 U.S.C. § 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved—i.e., the reference teachings establish a *prima facie* case of obviousness—is more probable than not.¹⁵

In this case, the Examiner asserts that—to make a structure as shown in Takeuchi's Fig. 1—one of ordinary skill in the art would have been taught by Brinkmann, Takeuchi, Schermutzki, Weaver and/or Bradshaw, to lay a first thermoplastic material, place a textile thereon, and then place a second thermoplastic material onto the textile, as claimed by Appellants. However, it is just as likely that one of ordinary skill would have been taught to place a second thermoplastic material onto the textile, and then apply that combination to the top of a first thermoplastic material, which arrangement is specifically taught in Schermutzki's Fig. 3, wherein resin from feeder 11 is applied onto mat 4 before that mat 4 is applied over resin layer 40. This arrangement is again taught in Fig. 3 by feeder 11a, which applies resin to mat 4a before that mat 4a is applied over the resin on mat 4. Still further, this arrangement is taught in Schermutzki's Fig. 4, wherein resin from feeder 11 is applied to mat 4 before that mat 4 is applied over resin layer 40.

Accordingly, the Examiner has failed to establish *prima facie* obviousness by a preponderance of the evidence.

¹⁴ *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

¹⁵ See MPEP § 2142.

In light of the above, Brinkmann, Takeuchi, Schermutzki, Weaver, and Bradshaw fail to render obvious Appellants' claims 1 and 32. Likewise, these references fail to render obvious dependent claims 2-5, 10-23, and 25-31.

Issue 2

The Examiner rejected claim 8 under §103(a) as being unpatentable over Brinkmann in view of Takeuchi and Schermutzki and in view of Weaver and/or Bradshaw, and further in view of US Patent 4,997,507 to Meyer (hereinafter Meyer) and US Patent 3,883,386 to Garbini et al. (hereinafter Garbini).

Because this rejection is based on Brinkmann, Takeuchi, Schermutzki, Weaver and/or Bradshaw, Appellants comments as set forth above are pertinent here and, therefore, are incorporated by reference thereto. Further, both Meyer and Garbini fail to teach or suggest anything that cures the above-noted deficiencies in the Examiner's attempted combination of Brinkmann, Takeuchi, Schermutzki, Weaver and/or Bradshaw.

Issue 3

The Examiner rejected claims 13-17, 19, and 20, under §103(a) as being unpatentable over Brinkmann in view of Takeuchi and Schermutzki and in view of Weaver and/or Bradshaw, and further in view of the admitted prior art as set forth in the specification at page 1, line 9 to page 2, line 2 (hereinafter the APA).


Because this rejection is based on Brinkmann, Takeuchi, Schermutzki, Weaver and/or Bradshaw, Appellants comments as set forth above are pertinent here and, therefore, are incorporated by reference thereto. Further, the APA fails to teach or suggest anything that cures the above-noted deficiencies in the Examiner's attempted combination of Brinkmann, Takeuchi, Schermutzki, Weaver and/or Bradshaw.

Conclusion

The present Brief on Appeal is being filed in triplicate. Unless a check is submitted herewith for the fee required under 37 C.F.R. §1.192(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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APPENDIX

Claims 1-5, 8, 10-23, and 25-32

1. A method for manufacturing a floor covering comprising the steps of :
scattering powder, granules or pellets of a thermoplastic material onto a first substrate to form a first coating;
applying a second substrate over the first coating;
scattering powder, granules or pellets of a thermoplastic material onto the second substrate, after said second substrate has been applied over the first coating, to form a second coating
leading the second substrate between a belt of a low pressure press and said first substrate;
applying heat to fuse the coatings between the belt and the first substrate;
smoothing the fused coatings between a pair of nipping rollers to provide a layer of desired thickness; and
cooling the layer.
2. A method as claimed in claim 1, wherein at least one of the substrates is a fibre matt material.
3. A method as claimed in claim 25, wherein the fibre matt has less than 100 g of glass fibre per m² of material.
4. A method as claimed in claim 3, wherein the fibre matt has less than 65g of glass fibre per m² of material.

5. A method as claimed in claim 4, wherein the fibre matt has from 30 to 50 g of glass fibre per m² of material

8. A method as claimed in claim 1 including a step of adjusting a gap between the nip rollers.

10. A method as claimed in claim 1, wherein the first substrate is defined by a lower belt of the low pressure press.

11. A method as claimed in claim 1 wherein the second coating is of the same material as the first coating.

12. A method as claimed in claim 1, wherein the second coating is of a different material than the first coating.

13. A method as claimed in claim 1 wherein the first coating is of a saturation material to form, on heating, a saturation layer.

14. A method as claimed in claim 1 wherein the second coating is of a basecoat material to form, on heating, a basecoat layer.

15. A method as claimed in claim 1 wherein the thermoplastic material on one of the first and second substrates forms, on heating, a saturation layer to receive a basecoat layer.

16. A method as claimed in claim 1 wherein the thermoplastic material on one of the first and second substrates forms, on heating, a basecoat layer.

17. A method as claimed in claim 16, wherein the first substrate includes a saturation layer and the thermoplastic scattered onto the first substrate includes a basecoat-forming material, and

wherein the thermoplastic on the first substrate forms, upon the heat applying, a basecoat layer on the saturation layer.

18. A method as claimed in claim 1, wherein the first substrate is defined by a second belt of the low pressure press.

19. A method as claimed in claim 1 including the steps of:
scattering a first thermoplastic material onto a lower belt of the low pressure press; and
applying the first substrate over the first thermoplastic material,
wherein said scattering of powder, granules or pellets onto a first substrate comprises scattering a second thermoplastic material onto the first substrate, and
further wherein said applying heat to fuse the coatings comprises fusing the thermoplastic material to form a backing layer on one face of the first substrate and a saturation or basecoat layer on the other face of the first substrate.

20. A method as claimed in claim 19 wherein the second thermoplastic material forms a saturation layer and the method includes the steps of:
scattering a third thermoplastics material over the saturation layer;
leading the substrates between the belt and the lower belt; and
applying heat to the belts to fuse the third thermoplastic material to form a basecoat layer on the saturation layer.

21. A method as claimed in claim 1, comprising a step, after heating, of leading the substrates over a smoothing roller prior to cooling.

22. A method as claimed in claim 1, wherein the layer is cooled, after fusing by leading the layer through a cooling station.

23. A method as claimed in claim 1 wherein at least one of the substrates is a mineral felt.

25. A method as claimed in claim 2, wherein at least one of the substrates is a glass fibre matt material.

26. A method as claimed in claim 21, wherein the substrates are supported on a lower belt of the low pressure press as the lower belt is led over the smoothing roller.

27. A method as claimed in claim 1, comprising a step of leading the substrates over a smoothing roller, wherein the method includes the step of heating and/or cooling the substrates as they are led over the smoothing roller.

28. A method as claimed in claim 27, wherein the substrates are heated or cooled by heating or cooling the smoothing roller.

29. A method as claimed in claim 27, wherein the substrates are led over an infeed roller to the smoothing roller.

30. A method as claimed in claim 29, wherein the substrates are led over an outfeed roller from the smoothing roller.

31. A method as claimed in claim 30, wherein the substrates are heated or cooled as they are led over the infeed and/or outfeed rollers.

32. A method as claimed in claim 1, wherein said step of scattering powder, granules or pellets onto the second substrate comprises scattering powder, granules or pellets of a thermoplastic material onto the second substrate, after said second substrate has been contacted with the first coating.